

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 438 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE K.J.VAIDYA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

1 to 5 NO

STATE OF GUJ.

Versus

SARTANSINH RUPSINH RATHOD

Appearance:

MR B.D. DESAI, APP for Appellant - State

MR NS SHETH for Respondent No. 1

CORAM : MR.JUSTICE K.J.VAIDYA

Date of decision: 20/03/97

ORAL JUDGEMENT

1. This appeal is directed against the impugned judgment and order dated 9th March, 1990, rendered in Criminal Case No. 373 of 1989 by the learned Judicial Magistrate, First Class, Himatnagar, acquitting Sartansinh Rupsinh Rathod, accused, who came to be tried for the alleged offences under Sections 279, 337, 338 of Indian Penal Code read with Section 112 and 116 of Motor

Vehicles Act.

2. According to the prosecution, the incident in question took place on 19.4.1988 at about 13.50 hours when Sartasinh Rupsinh Rathod, the driver of ST Bus driving it rashly and negligently, collided with one Bina Ifar causing her some injuries. It is the further case of the prosecution that PW 15 Rajnikant Baldevshai Patel, a teacher of K.K. Kadam Kanya Vidyalaya, Vyara had taken his students in luxury bus for a tour from Vyara to Rajasthan. On 19.11.1988, at about 1 O'clock the bus was stopped for taking light refreshment and at that time the respondent came from Himatnagar in full speed and collided with said Bina causing her some injuries. On the basis of this fact, a complaint was filed for the aforesaid alleged offences. After the investigation was over, the accused came to be chargesheeted to stand trial before the learned Magistrate at Himatnagar.

3. The accused pleaded not guilty and claimed to be tried. The learned Magistrate duly appreciating the prosecution evidence brought on record, acquitted the accused giving rise to the present appeal as stated above in para-1 of this judgment.

4. Mr. B.D. Desai, learned A.P.P. while challenging the impugned order of acquittal has taken this court through the evidence of all material witnesses and also reasons for the acquittal. It appears that the injured girl Bina was of 14 years of age at the time when she received some injuries in the bus accident. It also appears that when the students alighted from the bus for taking light refreshment, the girl all of a sudden tried to cross the road for passing urine. In the meantime, she is alleged to have been met with the accident. In such circumstance, it is indeed very easy to say that the bus driver is expected to take some care on highway and because the accident took place assume that he was rash and negligent. But, at the same time, it is also the duty of the pedestrians to take care. If the teachers, who accompanied the girl, did not take adequate care and as a result of their negligence, if some such accidents take place, it would be simply futile to argue that it was because of the rash and negligent driving of the accused that girl Bina received injuries. Having regard to the facts and circumstances of the case, it is not possible to say that it was precisely because of the rash and negligent driving of the accused that the accident in question had taken place. In this view of the matter, the appeal filed by the State is dismissed and the order passed by the Judicial Magistrate, First Class,

Himatnagar is confirmed.

5. In the result, this appeal filed by the State is dismissed.
